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No. 79-1637

In the Supreme Court of the United States

OCTOBER TERM, 1979

J. P. STEVENS & CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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Petitioner, in its supplemental brief, contends that the decision of the court below conflicts with the recent decision of the Fifth Circuit in *Florida Steel Corp.* v. *NLRB*, 620 F. 2d 79 (1980). In that case, the Board found that the company had committed an unfair labor practice by failing to provide the union with information relevant to its duties as the certified bargaining representative in two of the company's plants. The Board ordered, *inter alia*, that the company for a period of two years afford the union an opportunity to address the employees on working time whenever the Board scheduled an election

involving the union at any of petitioner's plants or whenever the company chose to address its employees regarding union representation. See 620 F. 2d at 81; *Florida Steel Corp.*, 242 N.L.R.B. No. 195 (June 20, 1979), slip op. 5-8.[1] The Fifth Circuit upheld the Board's access order, but only as applied to the two plants where the union had been certified as the bargaining agent.

The Fifth Circuit explained that the access remedies were justified at the company's organized plants "as a means for deterring any repetition of the conduct before the Board and for preventing other efforts by the company to impair the effectiveness of the union as a bargaining representative" (620 F. 2d at 83). But the court refused to extend the access remedies to the company's plants where the union was not the certified bargaining representative, because such an order "cannot be viewed as remedial with respect to the charge before [the Board], one involving interference with the union's performance of its role as a bargaining representative" (*ibid.*). Citing the instant case, however, the Fifth Circuit expressly reserved the question "[w]hether such access might be properly ordered in other circumstances, *e.g.*, in connection with a charge for violations in connection with multi-plant organizational efforts * * *" (*ibid.*).

In short, as the Fifth Circuit specifically recognized, there is no conflict between the decision in *Florida Steel* and the court of appeals' decision in this case. *Florida Steel* involved a violation of the duty to bargain with the certified bargaining representative. In that context, the Fifth Circuit concluded that an access order concerning

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[1]Specifically, the order provided for one 30-minute address with regard to each election and equal time with regard to each company speech.

unorganized plants could not facilitate the bargaining duties of the union and thus served no remedial purpose. The present case, on the other hand, involves a multi-plant organizing campaign. In that situation, unfair labor practices at one of petitioner's plants might well inhibit organizational activity at any of its other plants. Accordingly, a broad access order is appropriate here, even if it was not proper in the circumstances presented in *Florida Steel*.

For these reasons and the reasons set forth in the Board's Brief in Opposition, it is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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